IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6157 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANUBHAI B PATEL

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR UDAY BHATT, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu came to be detained by virtue of an order passed by the District Magistrate, Valsad dated the 18th January, 2000 and executed on the 5th June, 2000, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act,

1985 ("PASA Act" for short). The petitioner-detenu is labelled as a 'Bootlegger' as defined under the PASA Act and a satisfaction is recorded by the detaining authority in the grounds of detention that his activites are deterimental to public health and public order. For arriving at this subjective satisfaction, the detaining authority took into coinsideration seven offences registered against the detenu under the Bombay Prohibition Act. After considering possibility of resorting to less drastic remedies, the detaining authority came to a conclusion that the petitioner is requied to be detained under the provisions of the PASA Act in order to immediately prevent him from pursuing his illegal and anti-social activities.

2. The detenu has challenged the order of detention on various grounds. However, Ms. Kachhavah, learned advocate appearing for the petitioner, has pressed only one contention. She submitted that the order of detention was approved by the Government on Januart 25, 2000. A representation was made on behalf of the detenu to the detaining authority on the 24th June, 2000 and the detaining authority received the same on the 26th June, 2000. The detaining authority rejected the representation on the very same day. Ms. Kachhavah submitted that the detaining authority could not have rejected the representation. The authority was required to forward the same to the Government for its consideration as the detention was already approved by the Government on January 25, 2000 and the detaining authority had become functuous officio. In support of her argument, she has placed reliance on the decisions of this Court in the case of Urmilaben Navnitlal Gandhi v. Commissioner of Police, 1994(2) GLH (U.J.) 10 and Salim Pothiyu Rehmanbhai Belia v. District Magistrate and Ors, 1994(2) GLH (U.J) 11.

4. Learned Assistant Government Pleader, Mr. Bhatt, has opposed this petition. However, upon instructions and after verifying the files, he conceded to the factual aspect.

6. In light of this factual background, if the legal position is considered, the detaining authority becomes functuous officio after the order of detention is approved by the Government and the representation, thereafter, cannot be decided by him. All that he is required to do is to forward the same to the Government for its consideration. In the instant case, the detaining authority has rejected the representation after having become functuous officio. This can be said to

have infringed the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution. The continued detention of the detenu, therefore, would stand vitiated. The petition deserves to be allowed on this ground and the same is, therefore, allowed.

7. In the result, the petition is allowed. The impugned order of detention dated the 18th January, 2000, passed against the detenu is hereby quashed and set aside. The detenu-Kanubhai Babubhai Patel is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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